

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

BOBBY PAUL

PLAINTIFF

V.

CIVIL NO. 1:96CV321-JAD

CMC MANUFACTURING, INC.

DEFENDANT

MEMORANDUM OPINION

The plaintiff has filed a motion for front pay, or alternatively, for reinstatement after a jury returned a verdict in his favor on his claim of willful age discrimination.¹ Plaintiff has also filed a motion for attorneys' fees. Having reviewed these motions, the court is prepared to rule. The plaintiff has couched his motion for equitable relief in the form of a request for front pay as the preferred remedy, but for reinstatement if the court declines to award front pay. This circuit has repeatedly noted that reinstatement where feasible is the preferred remedy rather than front pay. *See, e.g., Weaver v. Amoco Products Co.*, 66 F.3d 85 (5th Cir. 1995). The question before the court is whether reinstatement is feasible. The case law has noted that reinstatement is not appropriate if (1) morale problems would ensue or other employee's work would be disrupted; (2) antagonism and discord would result; (3) no vacancies exist; (4) the employer would be required to displace another existing employee; (5) the plaintiff has secured substantially similar employment; or (6) there is no position comparable to plaintiff's former job. *Woodhouse v. Magnolia Hospital*, 92 F.3d 248, 257 (5th Cir. 1996). The court finds that several factors support a finding that reinstatement is not appropriate. First, plaintiff has secured substantially similar employment as a material engineer at Krueger International, Inc., although at a reduced salary. Second, defendant states through the affidavit of Mark M. Ivey, the Director of Human

¹ The parties stipulated that the plaintiff's lost wages were in the amount of \$24,092.00 as of the date of trial. Since the jury also found that the defendant acted willfully, plaintiff is also entitled to liquidated damages in the amount of \$24,092.00, resulting in a total jury award of \$48,184.00 plus interest at the legal rate of 5.375%.

Resources for CMC, Mississippi, Inc., that there are no vacant engineering positions available and one would have to be created by displacing a currently employed engineer. Finally, the court finds that reinstatement under these circumstances would cause morale problems with attendant disruption of other employee's work. The court, therefore, finds that reinstatement is not feasible.

Turning to the issue of front pay, such an award is intended to make the plaintiff whole and not to provide a windfall or retirement annuity. DeLoach v. Delchamps, 897 F.2d 815, 823 (5th Cir. 1990). Considering the length of plaintiff's employment and the apparent good health of the plaintiff, the court finds that an award of front pay is appropriate. However, since the jury has previously found a willful violation, the court finds that an award of five years front pay as requested by plaintiff is excessive. The court finds that three years front pay is appropriate and such an award will make the plaintiff whole. The difference in his salary with the defendant and his present job is \$14,822.00 per annum. Accordingly, the court awards a total of \$44,466.00 in front pay. The court declines to award any figure for annual raises as that figure is too speculative.

Turning to the issue of attorneys' fees, the time-honored guidelines of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) must be followed:

1. *The time and labor required.* Plaintiff's attorneys state that Jim Waide expended 97.1 work hours and 4.5 travel hours; David Chandler expended 10.5 work hours; Martin Crump expended 114.2 work hours and 5.5 travel hours; Victor Fleitas expended 39.9 work hours and 3.5 travel hours; and Grant Fox expended 110.25 work hours and 8.0 travel hours. The law firm of Waide, Chandler & Fleitas, P.A., also utilized 5.1 work hours for paralegals. Having reviewed the file in this matter, the court finds that the time expended is excessive for the discovery, motion practice, preparation and the three day trial of this case. Moreover, the court finds much duplication through multiple attorneys providing simultaneous service. The court finds,

therefore, that the requested hours should be reduced to the following amounts:

1. Jim Waide	77.7 hours
2. David Chandler	9.5 hours
3. Martin D. Crump	68.5 hours
4. Victor Fleitas	31.9 hours
5. Grant Fox	<u>66.2</u> hours
TOTAL	253.8 hours

The requested time for travel and paralegals is not excessive.

2. *The novelty and difficulty of the questions.* This case did not involve any novel or difficult questions.

3. *The skill requisite to perform the legal service properly.* This type of case requires above average legal abilities and plaintiff's attorneys are well-known to the court as being proficient in the area of employment discrimination.

4. *The preclusion of other employment by the attorney due to acceptance of this case.* This guideline was not a factor in this case.

5. *The customary fee.* The court is familiar with the attorneys in this case and the customary hourly rates for attorneys with the expertise of each. Mr. Waide has practiced in this court for twenty years and his firm is one of the premier employment discrimination firms in the state. His hourly rate of \$150.00 is reasonable. David Chandler's hourly rate of \$125.00 is reasonable for his experience in this court. Victor Fleitas' hourly rate of \$110.00 is also reasonable for his experience. Martin Crump is the newest associate of Mr. Waide and the court finds an hourly rate of \$85.00 is more customary in this area for a lawyer of Mr. Crump's experience. The court further finds that an hourly rate of \$125.00 is reasonable for Grant Fox. The requested rate of \$40.00 for paralegal time is also reasonable and travel time will be billed at ½ the hourly rate of the lawyer involved.

6. *Whether the fee is fixed or contingent.* This case was on a contingent fee contract with the attorney receiving 50% of any recovery.

7. *Time limitations imposed by the client or the circumstances.* This guideline was not a factor.

8. *The amount involved and the results obtained.* The plaintiff was successful in obtaining a verdict of willful age discrimination. The monetary award, exclusive of attorneys' fees, was \$92,650.00

9. *The experience reputation and ability of the attorneys.* Mr. Waide and his associates specialize in employment discrimination cases, have expertise in the area, and enjoy a reputation for skill and success in this area.

10. *The undesirability of the case.* This guideline was not a factor.

11. *The nature and length of the professional relationship with the client.* This guideline was not a factor.

12. *Awards in similar cases.* The court is familiar with awards in similar cases and this case is in line with those awards.

With the above guidelines in mind the court awards the following attorneys' fees:

(1) Mr. Waide 77.7 hours @ \$150/hr	=	\$11,655.00
travel time - 4.5 hours @ \$75/hr	=	<u>337.50</u>
TOTAL		\$11,992.50
(2) Mr. Chandler 9.5 hours @ \$125/hr	=	\$ 1,187.50
(3) Mr. Crump 68.5 hours @ \$85/hr	=	\$ 5,822.50
travel time - 5.5 hours @ \$42.50/hr	=	<u>233.75</u>
TOTAL		\$ 6,056.25
(4) Mr. Fleitas 31.9 hours @ \$110/hr	=	\$ 3,509.00
travel time - 3.5 hours @ \$55/hr	=	<u>192.50</u>
TOTAL		\$ 3,701.50
(5) Mr. Fox 66.2 hours @ \$125/hr	=	\$ 8,275.00
travel time - 8.0 hours @ \$62.50/hr	=	<u>500.00</u>
TOTAL		\$ 8,775.00
(6) Paralegals 5.1 hours @ \$40/hr	=	\$ 204.00

The court further finds that the requested expenses in the amount of \$1,608.07 is also reasonable.

Accordingly, the court awards plaintiff a total attorneys' fee of \$31,916.75 plus \$1,608.07 in expenses.

A separate judgment will be entered.

THIS ____ day of August, 1998.

UNITED STATES MAGISTRATE JUDGE